88-1544

No.87-

FEB 2 1989
JOSEPH F. SPANIOL, JR.
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1988

CITIZEN DALE ADAMS
Petitioner
v.
PROVIDENT MUTUAL LIFE INSURANCE CO.
OF PHILADELPHIA
&
NATIONAL LABOR RELATIONS BOARD
Respondents

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

APPENDIX

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UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 88-1435

ADAMS, DALE, CITIZEN

vs.

PROVIDENT MUTUAL LIFE INSURANCE COMPANY &
NATIONAL LABOR RELATIONS BOARD

Dale Adams

Appellant

SUR PETITION FOR REHEARING

BEFORE: GIBBONS, Chief Judge, SEITZ, HIGGINBOTHAM, SLOVITER, BECKER, STAPLETON, MANSMANN, GREENBERG, HUTCHINSON, SCIRICA, COWEN, and NYGAARD, Circuit Judges

The petition for rehearing filed by appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and

a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.*

*This Judgement was signed by Circuit Judge Walter K. Stapleton and filed Dec. 1, 1988.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 88-1435

ADAMS, DALE, Citizen

vs.

PROVIDENT MUTUAL LIFE INSURANCE COMPANY &
NATIONAL LABOR RELATIONS BOARD

Dale Adams,

Appellant

On Appeal From the United States District Court
For the Eastern District of Pennsylvania
(D. C. Civil Action No. 88-2512)
District Judge: Honorable James T. Giles

Submitted October 14, 1988

BEFORE: STAPLETON, GREENBERG, and SCIRICA
Circuit Judges

JUDGEMENT ORDER

After consideration of the contentions raised by appellant, it is

ORDERED AND ADJUDGED that the judgement of the district court be and is hereby affirmed.

Cost taxed against appellant.*

*This Judgement and Order was signed by Circuit Judge Walter K. Stapleton and filed Nov. 3, 1988.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CITIZEN DALE ADAMS	:	CIVIL ACTION
vs.	:	
PROVIDENT MUTUAL LIFE INSURANCE CO., et al.	:	NO. 88-2512

ORDER

AND NOW, this 12th day of May, 1988, upon consideration of defendent Provident Mutual Life Insurance Company's motion to dimiss plaintiff's complaint, and plaintiff's resonse thereto, it is hereby ORDERED that plaintiff's complaint is DISMISSED with prejudice for the reasons that follow:

1. Plaintiff is suing Provident Mutual Life Insurance Company (Provident) and the National Labor Relations Board (NLRB) for claims arising out of his termination by Provident and his subsequent filing of an unfair labor practice charge with the NLRB against Provident.

2. Plaintiff alleges that Provident unjustly fired him in violoation of his "right to life, liberty, and pursuit of happiness." Complaint, Petition for Consideration, p. 2. The

fourteenth amendment provides that

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; ...
> U. S. Const. XIV, S 1.

To state a claim under the fourteenth amendment, plaintiff must allege state action. Lugar v. Edmonson Oil Co., Inc., 457 U.S. 922, 935 (1982). Plaintiff has only alledge action by Provident, a private party, and plaintiff's claim must be dismissed.

Plaintiff may not bring a claim against Provident under the fifth amendment either. The fifth amendment is a protection for individual against actions by the federal government and cannot be used here.

3. Plaintiff next alledge that Provident unjustly refused ti reinstate after the Pennsylvania Compensation Board of Review concluded that plaintiff did not engage in willful misconduct and allowed him to collect unemployment benifits. Complaint, I 1, Affidavit, p. 2. The Unemployment Compensation Board is authorized to review applications for unemployment benifits but has no authority to reverse the personnel deci-

sions of employers. 43 Pa. Cons. Stat. S 751 et seq. (Purdon 1964). Thus, Provident does not have any obligation to rehire plaintiff as a result of the Board's decision and plaintiff's claim is dismissed pursuant to Fed. R. Civ. P. 12(b) (6).

4. Plaintiff next claims that the NLRB wrongfully refused to issue plaintiff's unfair labor practice complaint against Provident. This Court does not have jurisdiction to hear unfair labor practice charges. These claims are within the jurisdiction of the NLRB alone. See Burns v. Supermarkets General Corp., 615 F. Supp. 154, 160 (E.D. Pa. 1985). This court also lack jurisdiction to review the day to day decisions made by the General Counsel of the NLRB not to pursue unfair labor practice claims. Vaca v. Sipes 386 U.S. 171, 182 (1967) (citing United Electrical Contractors Ass'n v. Ordman. 366 F. 2d Cir. 1966). Therefore, plaintiff's claim is dismissed.*

*These Opinions and Judgements was signed by District Judge James T. Giles and filed May 12, 1988.